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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/719,674      | 11/21/2003  | Joshua D. Hug        | 109905-130795       | 1315             |

61857 7590 10/10/2008  
AXIOS LAW GROUP, PLLC / REALNETWORKS, INC  
1525 FOURTH AVENUE  
SUITE 800  
SEATTLE, WA 98101

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| EXAMINER |
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JOHNSON, CARLTON

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2436

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| MAIL DATE | DELIVERY MODE |
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10/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|  |                                       |                                       |  |
|--|---------------------------------------|---------------------------------------|--|
| <p align="center"><b>Advisory Action</b><br/><b>Before the Filing of an Appeal Brief</b></p> | <b>Application No.</b><br>10/719,674  | <b>Applicant(s)</b><br>HUG, JOSHUA D. |  |
|  | <b>Examiner</b><br>CARLTON V. JOHNSON | <b>Art Unit</b><br>2436               |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-6, 8-19, 31-36, 38, 39, 41-43, 45-52, 54 and 56-61.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Nasser G Moazzami/  
Supervisory Patent Examiner, Art Unit 2136

/Carlton V. Johnson/  
Examiner, Art Unit 2136

## Response to Remarks

The Hall prior art is used to reject the generation and usage of clear form rights information in order to achieve the advantage of easy access by simplifying rights enforcement as per invention. (see specification page 4, lines 26-29: "Storing the information in clear form can greatly simplify rights enforcement and/or usage reporting because the information does not need to be decrypted before it can be read or used either on the client device or by an external device.")

The Hall prior art discloses the usage of clear form rights information plus the protection and security of data integrity using a cryptographic hash. (see Hall col. 2, lines 7-14; col. 6, lines 12-16; col. 6, lines 28-32: digital rights management; col. 6, lines 19-28: clear form storage of digital rights information, integrity hash) The Thoma prior art is used to disclose and reject the inaccessible device key limitation. (see Thoma paragraph [0005], lines 1-3: content distribution; paragraph [0031], lines 15-21; paragraph [0033], lines 5-9; paragraph [0033], lines 11-12: inaccessible key)

The Serret-Avila prior art discloses generating a second integrity (internal integrity hash) hash using a previously generated integrity hash value as input. (see Serret-Avila col.4, lines 43-49; col. 5, lines 2-11: integrity hash generation using input hash value) A hash is a well known cryptographic function.

Applicant has argues the obviousness of the combination of references.

The rejection to each independent and dependent claim includes a citation from the referenced prior art that discloses the basis for the rejection. Each obviousness combination clearly indicates the claim limitation the combined reference prior art teaches. In addition, a cited passage from the referenced prior art clearly indicates the motivation for the obviousness combination. Each obviousness combination's disclosure is equivalent to the Applicant's claimed limitation(s) for the claimed invention.

Achieved advantage is a valid motivation for the combination of referenced prior art. The combination of each referenced prior art combination states a motivation for the combination, which translates to an achieved advantage for the combination.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The Nonaka prior art discloses an apparatus for encryption functions with cryptographic key capabilities and a license (resource, device) key. (see Nonaka paragraph [0019], lines 7-11: data processing apparatus; paragraph [0339], lines 2-6: attached host CPU, client, apparatus, license (device) key) Applicant has before mentioned a unique key but the term "unique" does not appear anywhere within the specification or the original claims. There is no disclosure in the specification or the original claims that the device key is unique.

The Serret-Avila prior art is in the same field of endeavor as the claimed invention. The Serret-Avila prior art concerns systems and methods for authenticating and protecting the integrity of electronic information (content data) using cryptographic techniques. The generation of a hash is a cryptographic technique and utilized in the claimed invention. Authentication is the application of access rights to electronic information or content data to determine the scope of access and utilized in the claimed invention.

Applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicant has mentioned the number of references used for the grounds of rejection. (see Remarks Page 11: prior art abounds with references) In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).